SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

LC2003-000048-001 DT

03/03/2004

HONORABLE MICHAEL D. JONES

P. M. Espinoza Deputy

CLERK OF THE COURT

STATE OF ARIZONA F TYLER RICH

V.

BRENT DAVID RINGLE (001) MICHAEL J DEW

PHX CITY MUNICIPAL COURT REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

PHOENIX CITY COURT

Cit. No. #5847528

Charge: 1) DUI-LIQUOR/DRUGS/VAPORS/COMBO

DOB: 01/26/63

DOC: 12/22/99

This Court has jurisdiction of this criminal appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since its assignment on January 12, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the memoranda submitted by counsel.

Appellant was convicted in the Phoenix City Court after a jury trial of violating A.R.S. Section 28-1381(A)(1), Driving While Under the Influence, a class 1 misdemeanor offense. The State had filed an allegation of a prior DUI conviction. On January 14, 2003 at the time set for Docket Code 512

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sentencing, the Appellant admitted of his prior DUI conviction; however, the court neglected to follow the procedures outlined in Rule 17.6, Arizona Rules of Criminal Procedure, and neither counsel brought this issue to the court's attention in a timely fashion.

Both parties are in agreement that the record in this case at the time of sentencing is deficient in that the trial judge did not advise Appellant regarding the nature of the allegation of the prior DUI conviction, the effect that the prior conviction would have upon the Appellant's sentence, and the Appellant's right to require Appellee to proceed to trial, and finally, the right of the Appellant to be represented by counsel at a trial on the prior conviction.

Appellant correctly cites <u>State v. Stuart</u> as the controlling authority in cases such as this. <u>Stuart</u> requires that this court remand the matter back to the trial court for an evidentiary hearing to determine whether the Appellant was aware of the range of sentence that could result from his admission a prior DUI conviction, his right to proceed to trial on the issue of a prior conviction, and his right to be represented by appointed counsel at the prior trial. If the trial judge determines that the Appellant did not know any of this information, the trial judge shall allow the Appellant to withdraw his admission of a prior DUI conviction and shall set the prior conviction issue for a trial.

IT IS ORDERED remanding this matter back to the Phoenix City Court for an evidentiary hearing consistent with this opinion.

/	s/	HONOR	ABLE	MICHAE	L D.	JONES	

JUDICIAL OFFICER OF THE SUPERIOR COURT

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¹ 168 Ariz. 83, 811 P.2d 335 (App. 1990). Docket Code 512